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CONFIDENTIAL SETTLEMENT DISCUSSIONS

April 19, 2017

VIA ELECTRONIC and CERTIFIED MAIL

Juan Fajardo
U.S. EPA
Region II
290 Broadway
New York, New York 10007-1866

Re: Lower Passaic River Cash Out Settlements

Dear Mr. Fajardo:

Stanley Black & Decker, Inc. ("Stanley") received EPA's March 30, 2017 Notice Regarding Next Steps Including Initial Cash Out Settlement ("Notice Letter") regarding the cleanup of the lower 8.3 miles of the Lower Passaic River ("LPR") Superfund site. In the Notice Letter, EPA stated that it has notified twenty parties that EPA has identified as candidates for early cash out settlements because they did not discharge dioxins, furans or PCBs to the LPR. EPA stated that parties responsible for the release or discharge of dioxins, furans or PCBs into the LPR should participate in implementing or funding the remedy for the lower 8.3 miles of the LPR. In addition, EPA stated that parties that are not one of the twenty early cash out parties and are also not associated with the release of dioxins, furans or PCBs might be eligible for a cash out settlement through a third party allocation process.

EPA did not explain the process it used or criteria it considered when making the initial settlement offers. In any event, as explained below, Stanley did not discharge dioxins, furans or PCBs to the LPR and, therefore, requests that it be afforded the opportunity to be included in the early cash out settlement group. If that is denied, Stanley should be included in the second cash out settlement group. Stanley makes these requests with a full reservation of its rights and defenses under CERCLA. Stanley will be happy to supplement this submission when EPA clarifies the criteria considered and we are confident that we can qualify for the cash out settlement option.

Stanley and its consultant completed a comprehensive analysis of the potential contribution of contaminants from the former Stanley Tools facility in Newark, New Jersey to the LPR. This analysis has confirmed that the former Stanley Tools facility did not discharge dioxins, furans or PCBs (or any of the other contaminants of concern driving the human health and ecological risk)

into the LPR. Moreover, there is no evidence or reason to suspect that the former Stanley Tools facility used or created dioxins, furans or PCBs in its manufacturing process. Thus, as discussed below, Stanley should qualify for the early cash out settlement.

Background. Stanley's operations in Newark were located at two adjacent parcels located at the intersection of Chapel Street and Lister Avenue. The parcel located west of Chapel Street is referred to as the "West Parcel" and the parcel east of Chapel Street is referred to as the "East Parcel" (Figure 1). Stanley and its predecessor, Stanley Tool & Level, operated at the parcels from 1917 until operations terminated in June 1985.

Stanley operated a tool making facility that involved routine metal working operations that did not use large quantities of chemicals and did not use dioxins, furans or PCBs in its manufacturing process. The former Stanley Tools facility was not located adjacent to the river. It was located 350 feet from the LPR at its closest point. There is no evidence that site soil or groundwater contamination (discussed below) has ever migrated to the LPR. Stanley's sole contribution to the LPR resulted from its wastewater discharges (which did not contain dioxins, furans, or PCBs) through pipes and combined sewers, which periodically overflowed to the LPR.

Stanley's wastewater discharges contained relatively small amounts of conventional pollutants (not containing dioxins, furans, or PCBs), which are quite distinguishable from the primary contaminants driving the risk and, therefore, the cleanup of the river. Stanley's contribution to the river relative to the overall mass of the same types of chemicals in the contaminated sediment is de minimis at best. And, the types of contaminants discharged by Stanley are considerably less toxic than the primary contaminants, such as dioxins, furans and PCBs. In fact, the chemicals discharged by Stanley are not considered primary contaminants of concern for human health or ecological risks relative to the risks posed by dioxins, furans and PCBs. Finally, navigational dredging removed approximately 50% or more of the contaminants contributed by Stanley to the LPR.

Stanley's Potential Discharges into the Passaic River

To understand the types of hazardous substances that were potentially conveyed to the LPR from the former Stanley Tools facility (which did not include dioxins, furans, or PCBs), it is important to understand the tool making processes that occurred as well as the conveyance mechanisms leading to the river. We have provided below an overview of the historical tool making processes, along with the chemicals used and wastes generated and then discusses the nexus of these chemicals to the sewers and, eventually, the LPR.

Stanley's Tool Making Processes

The general manufacturing process flow for the former Stanley Tools facility, as provided in Stanley's New Jersey Environmental Cleanup Responsibility Act ("ECRA") submission, is attached as Figure 2.

The manufacturing process at the Newark plant generated limited water and other liquid wastes. In general, the process from a waste generation perspective was similar in the early 1900s as it was in the 1970s and 1980s.[1] Overall, the majority of the processes at the former Stanley Tools facility were dry and involved forming steel tools from metal stock. The processes relevant to the LPR were those that produced wastewater and other liquid wastes, included grinding, heat treatment, quenching, cleaning, and lacquer coating.

Stanley's Discharges to the LPR

There was no municipal sewer system before 1925 and, therefore, the Stanley Tools facility and other industries are presumed to have discharged directly into the LPR. The PVSC interceptor was operational by 1925 and served the Stanley Tools facility at that time. The sewer system servicing the Stanley Tools facility was equipped with combined sewer overflow ("CSO") regulators until 1971. From 1925 to 1971, a small portion of the Stanley Tools facility's wastewater discharged to the LPR periodically during storm events. PVSC sealed the relevant CSO in 1971 thereby eliminating Stanley Tools' discharges to the LPR.

There is no indication that the former Stanley Tools facility discharged 2,3,7,8-TCDD, other dioxins/furans or PCBs into the LPR. The U.S. EPA does not consider dioxins, furans or PCBs to be a chemical of concern in the metal products and machinery industry, which has operations and wastewater discharges analogous to the former Stanley Tools facility. Dioxins, furans and PCBs were not used in or created by the Stanley Tools manufacturing process.

Based on the FFS Remedial Investigation Risk Assessment findings and the amounts of contaminants discharged, the discharges from the former Stanley Tools facility pose a negligible risk when compared to dioxins, furans, PCBs, and other chemicals present in the LPR.

A substantial portion of Stanley's potential small contribution to the LPR sediment contamination (which did not include dioxins, furans, or PCBs) was removed through the frequent dredging activities that coincided with the vast majority of the former Stanley Tools facility's wastewater discharges. The most significant contribution of wastewater from the

[1] E.g., Cole, C. B. (1951). Tool Making. American Technical Society, Chicago, Illinois; Brearley, H. (1916). The Heat Treatment of Tool Steel. London, UK: Longman, Greens & Co.

former Stanley Tools facility to the LPR occurred during the period of direct discharge before the PVSC Interceptor was completed in 1924. This coincides with the period when navigational dredging up to RM 15.4 removed large quantities of sediment and any contamination contained within the sediment.

The river channel from Newark Bay to RM 15.4 was dredged repeatedly from 1874 to 1950, effectively removing the majority of the sediment in the LPR, not just once, but repeatedly. Thus, the majority of the Stanley Tools facility's contribution of chemicals (not containing dioxins, furans, or PCBs) to the LPR was removed. All portions of the river were dredged at least until 1930. Because over 50% of the wastewater discharges to the river from Stanley occurred before 1925 (the year the PVSC sewer became available), it is reasonable to assume that navigational dredging removed the majority of the Stanley Tools facility's contribution to the LPR.

Environmental Conditions of the Former Stanley Tools Facility

Stanley initiated its comprehensive environmental evaluation of the facility beginning in 1985, in accordance with the requirements of the ECRA and, later, the Industrial Site Recovery Act ("ISRA"). Stanley installed over 400 borings and test pits as well as 40 groundwater monitoring wells and collected hundreds of soil and groundwater samples. Stanley also thoroughly investigated its underground piping systems as part of the ECRA/ISRA process. This work fully delineated the extent of soil and groundwater contamination.

Stanley implemented soil remedial actions on both parcels, groundwater remediation, consisting of monitored natural attenuation of chlorinated solvents, on the East Parcel, and free-phase petroleum recovery and monitored natural attenuation on the West Parcel. Stanley has demonstrated that groundwater contaminants from its former site had not migrated to the LPR. Moreover, there is no evidence that soil contaminants from the former Stanley Tools site ever migrated to the LPR. Stanley is in the process of fulfilling its obligations under ISRA through the Licensed Site Remediation Professional program.

Conclusion Stanley operated a tool making facility that involved routine metal working operations that did not use large quantities of chemicals. The facility did not manufacture chemicals and the chemicals that it used are not those driving the cleanup of the LPR. Moreover, the former Stanley Tools facility was not located adjacent to the river and discharged its wastewater in the same manner as hundreds of other industries in the area. Stanley's discharges (which did not contain dioxins, furans, or PCBs) are in stark contrast to many of the industrial operations along the LPR, such as the chemical, paint, pigment, and pesticide manufacturers; foundries, casting, and plating operations; and oil refineries and distribution terminals, which

caused the vast majority of the contamination in the LPR. Stanley's discharges from its tool making operations are quite distinguishable from the primary contaminants (dioxins, furans and PCBs) driving the risk and, therefore, the cleanup of the river.

Please let me know if you need any other information from me as you consider Stanley's request to be included with the early cash out settlement group. We request copies of all correspondence concerning the settlement offers that EPA provides to any other parties.

Sincerely yours,

Andrew L. Kolesar

cc: Theodore C. Morris, Esq.

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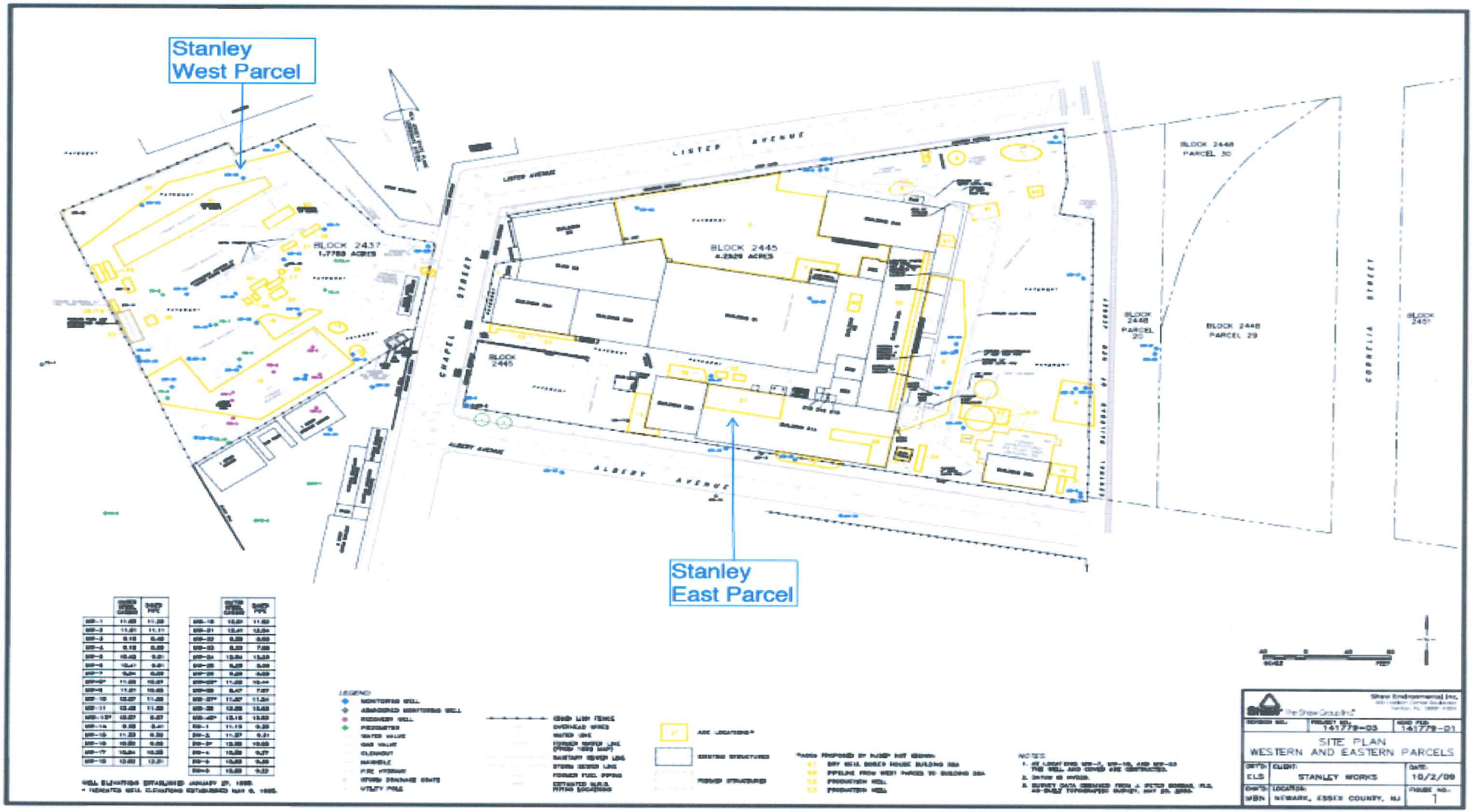

Figure 1 – Configuration of Stanley Tools' West and East Parcels

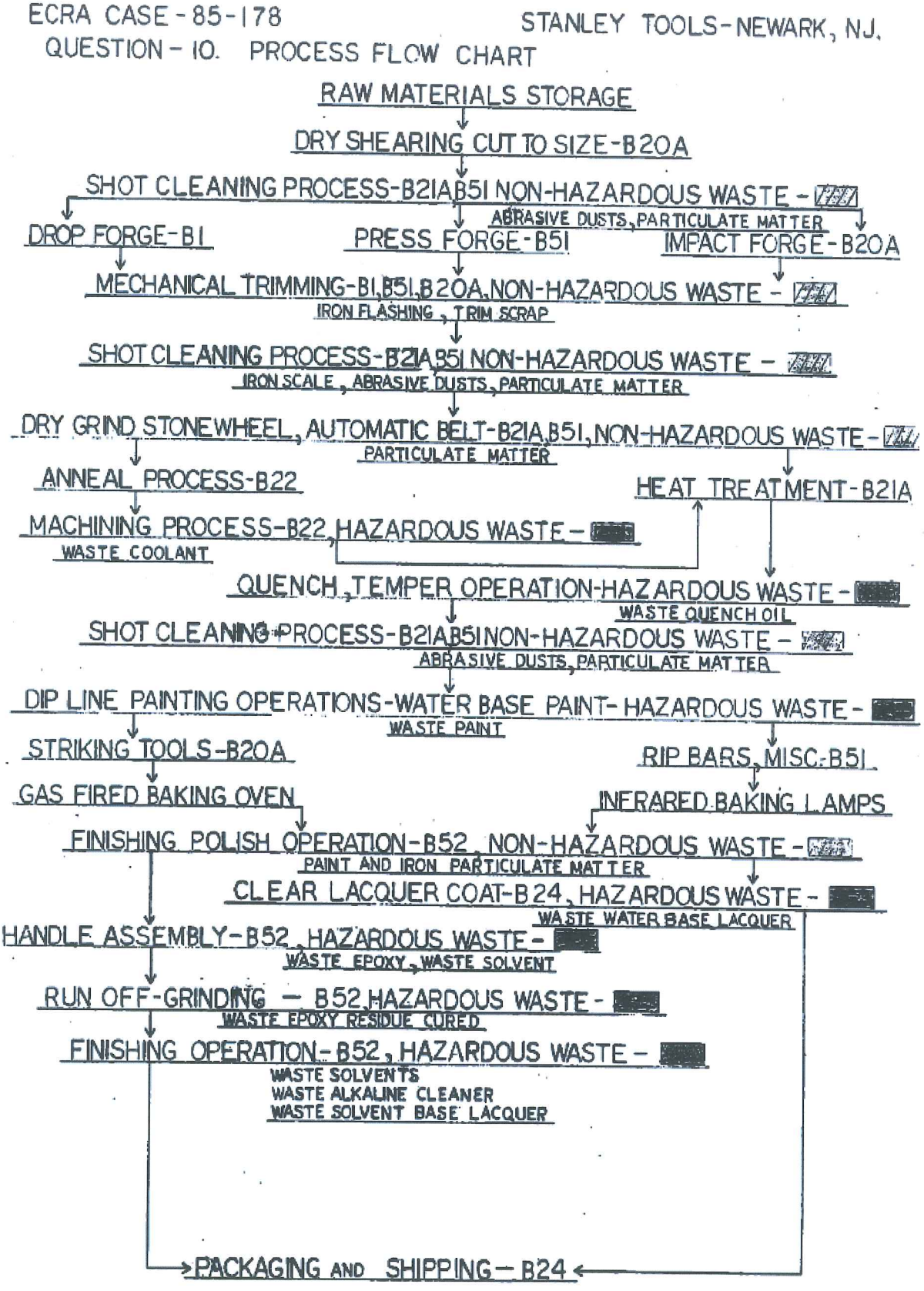

Figure 2 – Stanley Tools Process Flow Chart